

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:05-CV-675-BO(3)

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
Plaintiff,)	
)	
v.)	<u>O R D E R</u>
)	
THOMPSON CONTRACTING, GRADING,)	
PAVING, AND UTILITIES, INC.,)	
Defendant.)	

This is an action by the plaintiff against the defendant alleging violation of Title VII. Defendant has moved for summary judgment. The motion has been fully briefed by the parties, both supporting and opposing the motion, and, after examination and review, the court allows the defendant's motion for summary judgment. In June, 2004, an employee named Banayah Yisrael, formerly known as Gary Parker, was hired by the defendant as a commercial truck/dump truck operator. In September of 2004, he was fired after using controlled substance drugs and failing a random drug analysis.

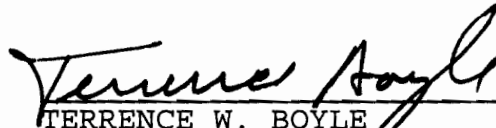
Thereafter, two months later, in November of 2004, he was rehired by the defendant for the same type of job, operating a dump truck. He was again fired approximately three months later in February, 2005. During the second period of employment, the employee in question missed four days of scheduled work without authorization and had an accident with his dump truck in early 2005, leading up to the discharge. Three of the four

unauthorized absence work days were Saturdays in the three-month period in question.

The plaintiff, on behalf of the employee, claims that the discharge was the result of discrimination in failing to make a religious accommodation to the employee. According to the plaintiff, at some time in 2003, Gary Parker converted to a religion identified as the Hebrew Israelite faith and claimed Sabbath observance on Saturdays as a part of his religious practice.

There is no evidence that the employer, the defendant, discriminated against the employee because of his religion or his religious practice. It appears that the discharge was related solely to performance, and that having given this employee a second chance after his earlier discharge, the employer was justified in later discharging the employee based on his performance, the accident with a company truck, and random and unauthorized absence from work. Summary judgment is allowed for the defendant.

This 30 day of March, 2008.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE